ORDINANCE NO. 2040, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 8.44 (Smoking Pollution Control) OF TITLE 8 (Health and Safety) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING SMOKING POLLUTION CONTROL

8.44.010 Purpose.

- A. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and a potential health hazard in outdoor settings. Studies have shown exposure to secondhand smoke is a significant health hazard for several populations, including children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by exposure to secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory functions, bronchoconstriction, and bronchospasm. Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of reactions to secondhand smoke. Smoking is a potential cause of fires, and cigarette butts are a pervasive source of litter.
- B. The city council of the city finds and declares that the purposes of this chapter are (1) to protect the public health and welfare by reducing exposure to secondhand smoke by prohibiting smoking in places where people live, work, and play, and (2) to strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air should have priority.

8.44.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined as follows:

- 1. "Dining Area" means any area, including streets and sidewalks, which is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink. Dining area includes outdoor patios and other areas used for the consumption of food or drink, including any public right of way in which dining is permitted through city approval.
- 2. "Employee" means any person who is employed or retained as an independent contractor by any employer in the consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- 3. "Employer" means any person, business, nonprofit entity, or corporation, including public agencies, who retain the services of one or more employees.
- 4. "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.
- 5. "Unenclosed" means any area that is not enclosed.

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- 6. "Place of employment" means any enclosed area under the legal or de facto control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to:
 - a. Conference and class rooms;
 - b. Employee cafeterias and dining areas;
 - c. Employee lounges, breakrooms, and restrooms;
 - d. Hallways, elevators, and warehouses;
 - e. Work areas.

A private residence is not a "place of employment."

- 7. "Public place" means any enclosed area, publicly or privately owned, to which the public is invited or in which the public is permitted, regardless of any fee or age requirement, including, but not limited to:
 - a. Banks;
 - b. Educational facilities;
 - c. Health care facilities;
 - d. Public transportation facilities;
 - e. Reception areas, and hotel and motel lobbies;
 - f. Restaurants, bars, and hotel and motel banquet rooms;
 - g. Retail stores;
 - h. Retail service establishments:
 - i. Retail food production and marketing establishments;
 - i. Waiting rooms, elevators, and restrooms.
 - k. Government buildings.

A private residence is not a "public place."

- 8. "Reasonable Distance" means a distance of twenty-five (25) feet in any direction from an area in which smoking is prohibited.
- 9. "Service Area" means any publicly or privately owned area, including streets and sidewalks, that is used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "service area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- 10. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as smoke from incense. The term "smoke" includes, but is not limited to, tobacco smoke, electronic cigarette vapors, and marijuana smoke.
- 11. "Smoking" means engaging in an act that generates smoke, such as possessing a lighted pipe, a lighted hookah pipe, an operating electronic cigarette, a lighted cigar, or a lighted cigarette of any kind or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

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- 12. "Recreational Area" means any area that is publicly owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "recreational area" includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, recreation centers, dog parks, and skateboard parks.
- 13. "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories. "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes. A retail or wholesale tobacco store does not include any enclosed area or business establishment that also serves or sells services or products other than tobacco use or tobacco products.

8.44.030 Smoking—Where prohibited.

- 1. Smoking is prohibited and shall not be permitted in the following enclosed areas within the city, in addition to places where smoking is already prohibited by state or federal law, in which case those laws apply:
 - A. Public places;
 - B. Buses, taxicabs and other means of public transit under the authority of the city, while within the boundaries of the city;
 - C. Places of employment;
 - D. Service areas;
 - E. Dining areas;
 - F. Recreational areas;
 - H. Private residences licensed as family day care homes during the hours of operation as family day care homes and in those areas where children are present.
- 2. Smoking is prohibited and shall not be permitted in the following unenclosed areas within the city, in addition to places where smoking is already prohibited by state or federal law, in which case those laws apply:
 - A. Service areas;
 - B. Dining areas and within a reasonable distance of any outdoor dining area, except private events that 1) are held entirely on private property, 2) limit attendees to those who are invited prior to the event, and 3) occupy the entire facility, both enclosed and unenclosed, at which the event is held, may be permitted to have a designated smoking area on such private property so long as such designated smoking area is a reasonable distance from any recreational area or any public sidewalk or street;
 - C. Recreational areas, except events at the Community and Cultural Center or the Outdoor Sports Center may be permitted to have a designated smoking area that is approved and defined by the Community Services Director or his or her designee as part of rental permit process including clean up of the designated smoking area;

- D. Within a reasonable distance from any doorway, window, opening, crack, or vent into a public place which fronts the sidewalk and/or street, except while the person smoking is actively passing on the way to another destination;
- E. Unenclosed areas being used for a public event on a public right of way, including a farmers' market, parade, craft fair, festival, or any other event which may be attended by the general public, except in a designated smoking area. The need for a designated smoking area is solely at the discretion of the event organizer and is not mandatory. If applicable, a designated smoking area:
 - (1) must be completely within an unenclosed area;
 - (2) must not overlap with any area in which smoking is otherwise prohibited by this chapter, state law or federal law;
 - (3) must be located a reasonable distance from any areas primarily used by children;
 - (4) must be no more than five percent (5%) of the total outdoor area of the property on which it is located
 - (5) must have a clearly marked perimeter; and
 - (6) must be identified by conspicuous signs.

8.44.040 Reserved.

8.44.050 Retail or Wholesale Tobacco Shops and Private Smokers' Lounges.

Notwithstanding any other provision of this chapter to the contrary, retail or wholesale tobacco shops and private smokers' lounges shall not be subject to the smoking restrictions of this chapter.

8.44.060 Posting of signs.

- A. At least one "No Smoking" sign with letters not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted on the building or other places where smoking is regulated by this chapter by the owner, operator, manager or other person having control of such building or other places.
- B. Every theater owner and/or manager shall post signs conspicuously in the lobby stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.
- C. Notwithstanding this section, the presence or absence of "No Smoking" signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

8.44.070 Enforcement.

A. Any citizen who desires to register a complaint under this chapter may file the same with the city manager or his or her designees.

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- B. Enforcement shall be implemented by the city manager or his or her designees. The fire department or the health department shall have the authority of requiring from any occupancy, while undergoing any regular inspection, a "self-certification" from the owner, manager, operator or other person having control of such establishment, that all requirements of this chapter have been complied with.
- C. Any owner, manager, operator or employee of any establishment controlled by this section shall have the right to inform persons violating this section of the appropriate provisions thereof.
- D. No person, employer, or landlord shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

8.44.080 Governmental agency cooperation.

The city manager shall request governmental and educational agencies having offices within the city to establish local operating procedures to cooperate and comply with this section. In federal, state and special school districts within the city, the city manager shall urge enforcement of their existing smoking prohibitions and request cooperation with this chapter.

8.44.090 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes.

8.44.100 Penalties.

- A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to comply with its provisions.
- B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.
- C. Any person who violates any provision of this section shall be guilty of an infraction.

SECTION II. STATUTORY CONSTRUCTION & SEVERABILITY.

It is the intent of the City Council of the City of Morgan Hill to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Morgan Hill hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

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SECTION III.

Effective Date; Posting. This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

This ordinance was introduced at a meeting of the City Council held on the 18th day of April, 2012 and April 25, 2012 and adopted at a meeting held on the 2nd day of May 2012, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:

COUNCIL MEMBERS:

Rich Constantine, Marilyn Librers, Gordon Siebert

NOES:

COUNCIL MEMBERS:

Larry Carr, Steve Tate

ABSTAIN:

COUNCIL MEMBERS:

None

ABSENT:

COUNCIL MEMBERS:

None

ATTEST:

APPROVED:

IRMA TORREZ, City

STEVE TATE, Mayor

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2040, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 2nd day of May 2012.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.